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November 8, 2012

VIA ELECTRONIC MAIL

The Honorable Denise L. Cote
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street, Room 1610
New York, NY 10007-1312

Re: *FHFA v. Bank of America Corp., et al.*, 11 Civ. 6195 (DLC) (S.D.N.Y.)

Dear Judge Cote:

We write on behalf of Plaintiff, the Federal Housing Finance Agency (“FHFA”), as Conservator for Fannie Mae and Freddie Mac (together, the “GSEs”), pursuant to the Court’s invitation, to provide authority supporting two related propositions that address the Court’s question regarding its standing to issue a Protective Order, at FHFA’s request, directing Defendant Bank of America to withdraw the subpoenas it issued to the Securities and Exchange Commission (“SEC”) and Patricia Cook.

Irrespective of the requirement of Fed. R. Civ. P. 45(c)(3) that a motion to quash be brought in the district from which a subpoena issues, the presiding trial court retains “the authority and responsibility to control the broad outline and scope of discovery in the case” under Fed. R. Civ. P. 26(c). *Rajala v. McGuire Woods, LLP*, 2010 WL 4683979, at *7 (D. Kan. Nov. 12, 2010); *see also Static Control Components, Inc. v. Darkprint Imaging*, 201 F.R.D. 431, 434-35 (M.D.N.C. 2001) (holding that Rule 45(c) “does not alter the broader concept that the district court in which an action is pending has the right and responsibility to control the broad outline of discovery”); *Straily v. UBS Fin. Servs., Inc.*, 2008 WL 5378148, at *2 (D. Colo. Dec. 23, 2008) (same); *Platinum Air Charters, Inc. v. Aviation Ventures, Inc.*, 2007 WL 121674, at *3 (D. Nev. Jan. 10, 2007) (same); Fed. R. Civ. P. 26(c)(1) (a court may issue an order, at the

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request of a party or person, “to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense”).

Pursuant to Rule 26(c), a party has standing to move for a protective order seeking to quash or modify a third-party subpoena. *See, e.g., Washington v. Thurgood Marshall Acad.*, 230 F.R.D. 18, 22 (D.D.C. 2005) (construing a party’s motion to quash as a Rule 26(c) motion for a protective order, and granting, in part, Defendant’s request to narrow the subpoenas based on overbreadth), *on reconsider.*, 232 F.R.D. 6 (D.D.C. 2005); *G.K. Las Vegas Ltd. P’ship v. Simon Prop. Grp., Inc.*, 2007 WL 119148, at *3 (D. Nev. Jan. 9, 2007) (holding that notwithstanding a party’s lack of standing to move to quash a subpoena, it may seek a Rule 26(c) protective order where its own interests are jeopardized or subpoena seeks irrelevant material); *In re REMEC, Inc. Sec. Litig.*, 2008 WL 2282647, at *1 (S.D. Cal. May 30, 2008) (recognizing as a “sound principle of law” that a party has standing under Rule 26(c) to seek a protective order regarding subpoenas that seek irrelevant information or jeopardize the party’s own interests).

If the Court would find it helpful, we are available for a conference or would be pleased to provide further briefing on the issues raised above.

Respectfully submitted,

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cc: All Counsel of Record (via email)